

MADISON COUNTY PLANNING

P.O. Box 278 • Virginia City, Montana 59755 • Phone (406) 843-5250 • Fax (406) 843-5229

Streamside Protection Steering Committee Meeting Summary

Tuesday January 27, 2009

First Madison Valley Bank, Basement Meeting Room, Ennis, MT

Attendance:

Planning Staff: Jim Jarvis (staff planner), Karen Filipovich (facilitator)

Steering Committee: Richard Lessner, Donna Jones, Gayle Schabarker, Pat Clancy, Chris Murphy, Amy Robinson, Jeff Laszlo, John East, Kelly Galloup.

Public (9):

Carol East

Arcylle Shaw

Shirley Love

Greg Morgan

Janice Carmody

Larry Love

Duane Thexton

Pat Goggins

Karen Shores

1. Welcome, Overview, and Introduction

The meeting was called to order at 6:30 p.m. by Karen Filipovich. Karen presented an overview of the agenda. Introductions were exchanged amongst committee members and the public.

2. Receive January 6, 2009 meeting summary and correspondence submitted since the last meeting

Jim Jarvis directed the committee's attention to a summary of the last meeting and copies of public comment (Bingham letter, January 26, 2009) received by the Planning Office since the last meeting. Jim Jarvis reviewed the main points from the meeting summary.

Amy Robinson provided additional information on a revised statewide streamside protection regulation (The Big Sky Rivers Act) that is being drafted for consideration by the 2009 legislature. The proposal would apply to the "Top 10 Rivers" in Montana. Once the bill is available, it will be provided to the steering committee.

3. Performance-based Streamside Protection Ordinance

Karen Filipovich directed the committee's attention to the revised draft ordinance and asked Jim Jarvis to provide an overview of specific items identified on the agenda.

Item 1 – Authority (Section 2)

Jim Jarvis generally discussed how county government regulations are based on the legal authority provided by state law. The proposed ordinance currently relies on the General Authority statute. This is the same statute used by the Big Hole River Ordinance adopted in 2004. In regards to the currently proposed streamside protection ordinance, the question has been raised; should a more specific statute, such as zoning, be utilized? In an effort to identify options, Jim Jarvis has requested input from the county's legal resources, including the County Attorney and

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the Montana Department of Commerce - Community Technical Assistance Program (MDOC-CTAP). A report will be presented to the committee as soon as it is available.

Item 2 – General Standards (Section 6, Part C)

Overview

Karen led the committee in a discussion of the variable-width, secondary setback zone. The secondary setback zone would apply if conditions on the property, supported by science, indicated that a larger buffer zone was merited. Any increase to the buffer zone, beyond the fixed-width area, would be negotiated with the property owner, through buffer averaging, to achieve a balance between the preferred building site and avoiding environmentally sensitive areas.

John East asked for clarification of where the setback would apply on a given parcel of land. Specifically, would the setback extend along the entire property boundary fronting on a river or streams, or just the area in front of the building site? Jim Jarvis responded the fixed-width setback applied to the location of new buildings and development-related activities (per Section 6.B.1-3), and extended the entire length of the property adjacent to the river or stream. The secondary setback would also extend the entire length of the property, if the conditions identified in Section 6.C.1-3 (see below) of the ordinance were present. The width of the secondary setback would vary as needed to define the boundary of an environmentally sensitive area.

John East asked how the setback would apply to pastureland in proximity to a building site. Several committee members stated that agricultural activities are not impacted nor constrained by these setback restrictions. Within the buffer zone, as defined by the fixed –width setback and, if applicable, the variable-width secondary setback, the following prohibitions, contained in Section 6.B.1-3, would apply.

Prohibited Activities

1. All building activity, unless specifically allowed under Section 11 – Exceptions, or by Section 10 - Variance Process.
2. Removal of endemic (**common**) vegetation, beyond reasonable efforts to maintain a defensible fire fighting zone around a building site or to control the spread of noxious weeds.
3. Introduction of non-native plant species. (In the absence of native vegetation due to site conditions associated with prior land use activities, reestablishment of native vegetation is encouraged. Refer to Exhibit C for examples of dominant vegetation types.)

Karen Filipovich asked the committee for input relating to the site-specific environmental conditions identified in the Section 6.C.1-3. These conditions would dictate the need for a secondary setback.

1. Critical aquatic or terrestrial riparian systems or habitat as defined in Exhibit C
2. Steep slopes, greater than 25% grade.
3. Unstable soil types, as defined by USGS Soil Survey Data

In response to Exhibit C, mentioned above, Chris Murphy inquired whether mapping data existed to identify riparian vegetation in the County. Greg Morgan offered that the county planning department already had access to a study that included such information. Jim Jarvis agreed that the “Madison County Build-Out Study” from 2002-03 provided some low resolution riparian

mapping information that would help guide setback decisions. Jim Jarvis agreed to research and present this information, in addition to any available Army Corp of Engineers data, to the committee for consideration. Amy Robinson recommended the general criteria within Exhibit C be formatted as a checklist to aid evaluation of the environmental significance of a property and the proposed building site. Jim Jarvis agreed to create the checklist and further suggested that locally available professional resources, i.e. Conservation District Managers, FWP Biologists, County Sanitarians/Floodplain Administrators, etc. already exist and could be utilized to help guide these science-based evaluations. Greg Morgan stressed the importance of Best Management Practices (BMPs) as mitigation opportunities.

Jeff Laszlo inquired about what data was available regarding USGS Soil Surveys. Jim Jarvis briefly described the soil classification data information used to evaluate geotechnical hazards, septic system design, and a variety of other soil-related development concerns. Soil information relevant to the proposed planning area will be attached as an appendix to the ordinance.

Chris Murphy, citing an example of a land bridge, suggested that man-made slopes greater than 25% be excluded from consideration.

In response to concerns expressed about how the County would effectively implement this setback review program, Richard Lessner proposed that this program would not be much different than that currently used to review septic permits. Much like the septic permit review program, setback review would evaluate the permit application based on accepted scientific criteria and best management practices, input from other agencies or consultants, and a site inspection to document actual field conditions. Based on this information, the setback permit would be approved, conditionally approved, or denied by the County.

Section 6.C. Proposed language

(The committee recommended the following changes, shown in bold or as strike-outs)

C. A variable-width, ~~building~~ **secondary** setback zone.

The secondary setback zone is intended to provide additional protection where **significant** ~~unique~~ environmental conditions relating to riparian habitat and water quality are readily apparent on the property. **A secondary setback zone shall be established where any one of Section 6.C.1-3 criteria exist, subject to Sections 8 and 11 of this ordinance.** ~~The width of this variable building setback will be negotiated with the property owner, through buffer averaging, to achieve "no net loss" of significant riparian habitat or water quality while also respecting the property owner's right to build on the property. (Incorporated into Section 8).~~ In many situations the **primary fixed-width** ~~vegetative~~ buffer zone will provide adequate resource protection, thereby negating the need for a secondary **buffer** ~~setback~~ zone.

A secondary **buffer zone** ~~setback~~, in addition to **and adjacent to** the **primary** buffer zone, **will** ~~may~~ be required to mitigate site-specific impacts to the following resources and/or conditions:

1. Critical ~~aquatic or terrestrial~~ riparian systems or habitat as defined in Exhibit C
2. **Natural Steep** slopes greater than 25% grade
3. Unstable soil types, as defined by USGS Soil Survey Data as defined in Exhibit C

Prohibited activities within the secondary setback zone are the same as those identified for the vegetative buffer zone (Section 6.B.1-3)

- D. Compliance with state and local sanitation requirements and water quality standards (Title 7, Chapter 13; Title 75, Chapters 5 and 6; Title 76, Chapter 4, MCA);
- E. Compliance with local, state, and federal floodplain regulations and other applicable Ordinances.

4. Next Meeting Agenda

The committee scheduled the next meeting for Tuesday February 24, 2009 at 6:30 PM in Ennis. The committee also agreed to a March 10 meeting and the suggestion was to make further meetings fall on the second Tuesday of the month.

The committee agreed to revisit Section 6 - General Standards, specifically the size of the fixed-width buffer zone. In preparation of reviewing Section 8 and 11 of the ordinance Jim Jarvis agreed to prepare the following:

- a. *Exhibit C checklist with specific water quality and riparian habitat criteria*
- b. *Existing mapping information (Build-out Study, ACOE, FEMA, etc.)*
- c. *Update Section 8 to include buffer averaging language*
- a. *Examples of soil type data*

5. Public Comment

Greg Morgan expressed concern that the committee wanted to revisit the size of the fixed-width setbacks (50/25 feet) and cautioned them about relying on “junk science”. He reminded the committee of the opinions of Dr. Patterson, a respected water resource scientist, relating to setbacks, specifically:

1. One size doesn't fit all
2. Any setback over 50 feet must fit [be justified]

Dr. Patterson spoke at a previous public meeting (MVGS Community Forum) on the subject of the streamside protection ordinance.

Greg Morgan went on to present the “Test of Scientific Data (Federal Rule 702)” typically used in a court of law to evaluate the validity of expert witness testimony. The test criteria include:

1. The data is reliable and applicable to the situation
2. The method of applying the data is reliable [tested and found effective]
3. The data has actually been applied according to the method

Duane Thexton cautioned the committee about focusing only on the impacts of housing development along rivers and streams, and neglecting the impacts of agricultural activities, e.g. a pig farm.

Janice Carmody stated that federal rules already exist to regulate the impacts of large scale agricultural activities adjacent to rivers and streams.

Jeff Laszlo agreed to research and share information on these federal regulations with the committee.

Carol East expressed her concern that this proposed regulation was “biased” toward residential development.

Meeting adjourned: 8:40 pm

The next committee meeting is scheduled for Tuesday February 24, 2009 - 6:30 p.m. Ennis.